

Appendix C The Aggregation Test

For purposes of the stockholder approval requirements (for example, Section 712 and 713 of the NYSE American LLC Company Guide), Staff will aggregate two or more transactions when they in substance constitute parts of one larger transaction. While each situation involves a “facts and circumstances” analysis, the following factors are considered:

- Use of proceeds – For example, will the funds raised be used for the same or related purpose and/or will the funds raised in one of the transactions be used to finance another of the transactions?
- Timing – For example, were the transactions agreed to and/or completed within close time proximity to each other? While there is no “safe harbor,” generally transactions not within six months of each other will not be aggregated absent other compelling factors.
- Commonality of investors – For example, is there a substantial overlap between the investors or other participants in the transactions?
- Contingencies – For example, is one or more of the transactions contingent on completion of another of the transactions?
- Single plan of financing – For example, do the transactions constitute a single plan of financing? Was one contemplated at the time of the other?